

NOT FOR PUBLICATION

MAY 28 2003

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRY WAYNE PIERCE,

Defendant - Appellant.

No. 02-10355

D.C. No. CR-01-00895-MHM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

Mary H. Murguia, District Judge, Presiding

Argued and Submitted May 13, 2003
San Francisco, California

Before: HAWKINS, W. FLETCHER, Circuit Judges, and BREYER,**
District Judge.

We affirm the District Court's denial of the defendant's motion to suppress.
The questions the officer asked the defendant during the initial phase of the traffic
stop were reasonably related to the justification for the stop and thus did not

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Charles R. Breyer, United States District Judge for the
Northern District of California, sitting by designation.

violate the Fourth Amendment. *See United States v. Perez*, 37 F.3d 510, 513 (9th Cir. 1994). Under the totality of the circumstances, the officer had a particularized and objective basis for suspecting the defendant was engaged in illegal activity so as to justify the defendant's further detention awaiting the arrival of a canine unit. *See United States v. Arvizu*, 534 U.S. 266, 273-74 (2002). It is objectively suspicious for a motorist to travel from Tennessee to California to visit a friend for only one day; it is more suspicious for that motorist to make the one-day visit because he (the motorist) is undergoing chemotherapy for a possibly fatal disease; finally, it is even more suspicious for that motorist not to know that friend's address. This information, combined with the defendant's increasingly nervous demeanor during the course of the traffic stop (he began to speak rapidly, stutter, shift his weight, and sweat profusely) and the excessive mileage on the defendant's past-due rental car, created a "particularized and objective basis" for the officer to suspect that criminal activity was afoot. *Id.* at 273 (internal quotation marks omitted). Therefore, the defendant's continued detention did not violate the Fourth Amendment.

AFFIRMED.